BM
497.8
.N4763
1981

JACOB NEUSNER

MAX WEBER REVISITED:

Religion and Society in Ancient Judaism

With Special Reference to the Late First and Second Centuries

The Eighth Sacks Lecture delivered on 12th May 1981

OXFORD CENTRE FOR POSTGRADUATE HEBREW STUDIES
1981

© Jacob Neusner, 1981

Published by
The Oxford Centre for Postgraduate Hebrew Studies
45 St. Giles', Oxford, England

Theology Library
SCHOOL OF THEOL
AT CLAREMO
California

Printed in Great Britain

A scholar's journey moves in ever-widening circles, down familiar paths towards frontiers of knowledge and across. For the study of religion in general, and Judaism as an example of the general, Max Weber laid out one road from the known even to the outer bounds of understanding. We do well again and again to walk on the road he laid out. There are two points of interest today in Weber's thought, one which serves to define my problem, and the other which shows the way in which I propose to solve it. First, Weber's interest in the relation between social stratification and religious ideas presents an enduring perspective for the analysis of the place of religion in society and of the relationship between religion and society. Second, Weber's mode of formulating ideal types for the purposes of analysis provides a model for how we may think about the castes, professions, and classes of society and the religious ideas they hold. The former is the fundamental issue. If we ask about whether we may discern congruence between the religious ideas to be assigned to a given group, described in gross terms as an ideal type, in ancient Israelite society, and the class status of that group, we use a mode of thought shaped by Weber in the analysis of a question raised by Weber.

It is in that sense alone that we revisit Weber. I do not propose to enrich the vast literature of interpretation of his writings, let alone discuss the enduring or transient value of his work on ancient Judaism, which is important only in the study of Weber. I shall simply take the road laid out by Weber, in order to cross frontiers of problems of interpretation not known to the world of learning in the time of Weber's *Ancient Judaism*, I mean, describing and explaining the character of Judaism as it took shape in the later first and second centuries. My purpose, stated simply, is to explore that paramount theme in Weber's great work, as expressed by Reinhard Bendix:

> In order to understand the stability and dynamics of a society we should attempt to understand these efforts in relation to the ideas and values that are prevalent in the society; or, conversely, for every given idea or value that we observe we should seek out the status group whose material and ideal way of life it tends to enhance. Thus, Weber approached the study of religious ideas in terms of their relevance for collective actions, and specially in terms of the social processes whereby the inspirations of a few become the convictions of the many (Reinhard Bendix, *Max Weber. An Intellectual Portrait* (N.Y., 1962: Doubleday), p. 259).

The question then is how to relate the religious ideas held by an important group of Jews in the later first and second centuries to the social world imagined by that group.

The group under discussion is that handful of sages who, from before 70, through the period between the second war against Rome, in 132–135, and down to the end of the second century, worked out the principal themes of Israelite life and law and produced the Mishnah, their systematic account of the way in which Israel, the Jewish people in the Holy Land, should construct its life.* Taking up, in succession, the holiness of the Land, the proper conduct of cult and home on holy days, the holiness of family life with special reference to the transfer of women from the father's house to the husband's bed, the stable conduct of civil life, the conduct of the cult on ordinary days, and the bounds of holiness in a world of cultic uncleanness, the Mishnah designed the formative categories of reality and designated their contents.

Our work is to generalize about fundamental religious perspectives and collective actions. Now it is not difficult to take up one teaching or another within that law code and speculate about who may have said it, for what material or ideal purpose, and as an expression of which social status or context. But that sort of unsystematic and unmethodical speculation is hardly worthy of the question presented to us by Max Weber, because in the end the answers are beside the point. We wish to ask how and why "the inspirations of a few" — the sages of the document under discussion and the people who stand behind the document — become "the convictions of the many." For that purpose, episodic speculation on discrete sayings is not really pertinent, even if it *were* to be subject to the controls and tests of verification and falsification.

Rather I wish to turn to a more fundamental matter, which is the mode of thought of the group as a whole. That mode of thought is revealed, in particular, in the way in which questions are formulated. For what is telling is the asking; what is revealing is how people define what they wish to know. If we may discover the key to the system by which questions are generated

*Weber's formulation of the problem — the relationship of religious ideas to the group which held them — justifies our concentrating on a given book of the character of the Mishnah. First, we assume only that the Mishnah speaks for its authorities, with no presuppositions, at this point, about their prospective audience. Second, since the Mishnah to begin with is a collective document, carefully effacing the signs of individual authorship or authority, we are justified in deeming it to speak for a group. Third, as we shall now see, the Mishnah most certainly is a corpus of religious conceptions, framed, in some measure, through the medium of civil law to be sure. So it would be wrong to suppose that at hand is an exercise in treating a book as a religious community (!). Within the framework of Weber's paradigm, the Mishnah constitutes an ideal program for description and analysis of one suggestive aspect of the relationship between religion and society.

and by which the logic for forming and answering those questions is made to appear to be self-evident, and if we may then relate that mode of logic and inquiry to its social setting, then I believe we may claim to speak to that program of thought laid forth by Weber in his effort "to analyze the relation between social stratification and religious ideas" (Bendix, p. 258). In this regard, individual ideas, let alone the ideas of individual thinkers, are not important. The great classical historian, Harold Cherniss, says, "The historian is concerned to comprehend the individuality of a work of art only in order that he may eliminate it and so extract for use as historical evidence those elements which are not the creation of the author" (Harold Cherniss, "The Biographical Fashion in Literary Criticism," *University of California Publications in Classical Philology*, ed. by J. T. Allen, W. H. Alexander, and G. M. Calhoun, Vol. XII, No. 15, pp. 279–292; quotation, pp. 279–280). We must do the same. That is, we are not helped to know the ideas of individuals or even the concrete and specific doctrines of the document. We wish, rather, to eliminate not only individuality, but also all specificity. So we turn to what is most general. That is, as I said, we want to discover the systemic motive behind asking a question, the power which generates and defines both problems and the logic by which they will be solved.

Let me now state the proposition of this lecture at the outset. The issues which occupy the Mishnah's philosophical mode of forming ideas and defining questions to be taken up will be seen to emerge from the social circumstance of the people of Israel in the Land of Israel. Specifically, the Mishnah's systematic preoccupation with sorting out uncertainties, with pointing up and resolving points of conflict, and with bringing into alignment contradictory principles, corresponds in thought to the confusion and doubt which then disordered Israelite social existence in the aftermath of defeat and catastrophe. In every line the Mishnah both expresses the issue of confusion in the wake of the end of the old mode of ordering life above and below, and also imposes order by sorting out confused matters. The Mishnaic message is that Israel's will is decisive. What the Israelite proposes is what disposes of questions, resolves conflict, settles doubt. Everything depends upon Israelite will, whether this thing of which we speak be expressed in terms of wish, intention, attitude, hope, conception, idea, aspiration, or other words which speak of parts of the whole entity of heart and mind. So the medium is a sequence of problems of conflict and confusion, and the message is that things are what you will them to be. In a moment of deep despair and doubt such as the later first and second centuries, this appeal to the heart and mind of Israel penetrated to the depths of the dilemma.

I

THE MISHNAH IN ITS SOCIAL SETTING

The Mishnah presents a "Judaism," that is, a coherent world-view and comprehensive way of living. It is a world-view which speaks of transcendent things, a way of life expressive of the supernatural meaning of what is done, a heightened and deepened perception of the sanctification of Israel in deed and in deliberation. Sanctification means two things: first, distinguishing Israel in all its dimensions from the world in all its ways; second, establishing the stability, order, regularity, predictability, and reliability of Israel at moments and in contexts of danger, meaning instability, disorder, irregularity, uncertainty, and betrayal. Each topic of the Mishnah's system of Judaism as a whole takes up a critical and indispensable moment or context of social being. Through what is said in regard to each of the Mishnah's principal topics, what the system as a whole wishes to declare is fully expressed. Yet if the parts both severally and jointly give the message of the whole, the whole cannot exist without all of the parts, so well-joined and carefully crafted are they all together.

The critical issue in economic life, which means, in farming, is in two parts. First, Israel, as tenant on God's holy Land, maintains the property in the ways God requires, keeping the rules which mark the Land and its crops as holy. Second, at the hour at which the sanctification of the Land comes to form a critical mass, namely, in the ripened crops, comes the moment ponderous with danger and heightened holiness. Israel's will so affects the crops as to mark a part of them as holy, the rest of them as available for common use. The human will is determinative in the process of sanctification. Second, what happens in the Land at certain times, at Appointed Times, marks off spaces of the Land as holy in yet another way. The center of the Land and the focus of its sanctification is the Temple. There the produce of the Land is received and given back to God, the One who created and sanctified the Land. At these unusual moments of sanctification, the inhabitants of the Land in their social being in villages enter a state of spatial sanctification. This is expressed in two ways. First, the Temple itself observes and expresses the special, recurring holy time. Second, the villages of the Land are brought into alignment with the Temple, forming a complement and completion to the Temple's sacred being. The advent of the appointed times precipitates a spatial reordering of the Land, so that the boundaries of the sacred are matched and mirrored in village and in Temple. At the

heightened holiness marked by these moments of appointed times, therefore, the occasion for an affective sanctification is worked out. Like the harvest, the advent of an appointed time, a pilgrim festival, also a sacred season, is made to express that regular, orderly, and predictable sort of sanctification for Israel which the system as a whole seeks.

If for a moment we bypass the next two divisions, we come to the counterpart of the divisions of Agriculture and Appointed Times, that is, Holy Things and Purities. These divisions deal with the everyday and the ordinary, as against the special moments of harvest, on the one side, and special time or season, on the other. The Temple, the locus of continuous, as against special, sanctification, is conducted in a wholly routine and trustworthy, punctilious manner. The one thing which may unsettle matters is the intention and will of the human actor. The division of Holy Things generates its companion, the one on cultic cleanness, Purities. The relationship between the two is like that between Agriculture and Appointed Times, the former locative, the latter utopian, the former dealing with the fields, the latter with the interplay between fields and altar. Here too, once we speak of the one place of the Temple, we address, too, the cleanness which pertains to every place. A system of cleanness, taking into account what imparts uncleanness and how this is done, what is subject to uncleanness, and how that state is overcome — that system is fully expressed, once more, in response to the participation of the human will. Without the wish and act of a human being, the system does not function. It is inert. Sources of uncleanness, which come naturally and not by volition, and modes of purification, which work naturally and not by human intervention, remain inert until human will has imparted susceptibility to uncleanness, that is, introduced into the system, that food and drink, bed, pot, chair, and pan, which to begin with form the focus of the system. The movement from sanctification to uncleanness takes place when human will and work precipitate it.

The middle divisions, the third and fourth, on Women, on family law, and Damages, on civil law, finally, take their place in the structure of the whole by showing the congruence, within the larger framework of sanctification through regularity and the perfection of social order, of human concerns of family and farm, politics and workaday transactions among ordinary people. For without attending to these matters, the Mishnah's system does not encompass what, at its foundations, it is meant to comprehend and order. What is at issue is fully cogent with the rest. In the case of Women, attention focuses upon the point of disorder marked by the transfer of that disordering anomaly, woman, from the regular status provided by one man, to the equally trustworthy status provided by another. That is the point at which

the Mishnah's interests are aroused: once more, predictably, the moment of disorder. In the case of Damages, there are two important concerns. First, there is the paramount interest in preventing, so far as possible, the disorderly rise of one person and fall of another, and in sustaining the *status quo* of the economy of the household Israel, the holy society in perfect stasis. Second, there is the necessary concomitant in the provision of a system of political institutions to carry out the laws which preserve the balance and steady state of persons.

The divisions which take up topics of concrete and material concern, the formation and dissolution of families and the transfer of property in that connection, the transactions, both through torts and through commerce, which lead to exchanges of property and the potential dislocation of the state of families in society, are both locative and utopian. They deal with the concrete locations in which people make their lives, household and street and field, the sexual and commercial exchanges of a given village. But they pertain to the life of all Israel, both in the Land and otherwise. These two divisions, together with the household ones of Appointed Times, constitute the sole opening outward toward the life of utopian Israel, that diaspora in the far reaches of the ancient world. This community from the Mishnah's perspective is not merely in exile, but unaccounted for; it is simply outside the system, for the Mishnah declines to recognize and take it into account. Israelites who dwell in the land of (unclean) death instead of in the Land simply fall outside of the realm and range of (holy) life.

Now if we ask ourselves about the sponsorship and source of special interest in the topics just now reviewed, we come up with obvious answers.

So far as the Mishnah is a document about the holiness of Israel in its Land, it expresses that conception of sanctification and theory of its mode which will have been shaped among those to whom the Temple and its technology of joining Heaven and holy Land through the sacred place defined the core of being, I mean, the caste of the priests.

So far as the Mishnah takes up the way in which transactions are conducted among ordinary folk and takes the position that it is through documents that transactions are embodied and expressed (surely the position of the relevant tractates on both Women and Damages), the Mishnah expresses what is self-evident to scribes. Just as, to the priest, there is a correspondence between the table of the Lord in the Temple and the locus of the divinity in the heavens, so, to the scribe, there is a correspondence between the documentary expression of the human will on earth, in writs of all sorts, in the orderly provision of courts for the predictable and just disposition of exchanges of persons and property, and Heaven's judgment of these same

matters. When a woman becomes sanctified to a particular man on earth, through the appropriate document governing the transfer of her person and property, in heaven as well, the woman is deemed truly sanctified to that man. A violation of the writ therefore is not merely a crime. It is a sin. That is why the Temple rite involving the wife accused of adultery is integral to the system of the division of Women.

So there are these two social groups. But they are not symmetrical with one another. For one is the priestly caste, and the other is the scribal profession. We know, moreover, that in time to come, the profession would become a focus of sanctification too. The scribe would be transformed into the rabbi, locus of the holy through what he knew, just as the priest had been, and would remain, locus of the holy through what he could claim for genealogy. The tractates of special interest to scribes-become-rabbis and to their governance of Israelite society, those of Women and Damages, together with certain others particularly relevant to utopian Israel beyond the system of the Land — those tractates would grow and grow. Others would remain essentially as they were with the closure of the Mishnah. So we must notice that the Mishnah, for its part, speaks about the program of topics important to the priests. It does so in the persona of the scribes, speaking through their voice and in their manner.

Now what we do not find is astonishing in the light of these observations. It is sustained and serious attention to the matter of the caste of the priests and of the profession of the scribes. True, scattered through the tractates are exercises, occasionally important exercises, on the genealogy of the priestly caste, their marital obligations and duties, as well as on the things priests do and do not do in the cult, in collecting and eating their sanctified food, and other topics of keen interest to priests. Indeed, it would be no exaggeration to say that the Mishnah's system, seen whole, is not a great deal more than a handbook of how the priestly caste wished to design its life in Israel and the world. And this is what makes amazing the fact that in the fundamental structure of the document, its organization into divisions and tractates, there is no place for a division of the Priesthood. There is no room even for a complete tractate on the rules of the priesthood, except, as we have seen, for the pervasive way of life of the priestly caste, which is everywhere. This absence of sustained attention to the priesthood is striking, when we compare the way in which the Priestly Code at Leviticus Chapters One through Fifteen spells out its triplet of concerns: the priesthood, the cult, the matter of cultic cleanness. Since we have divisions for the cult and for cleanness at Holy Things and Purities, we are struck by the absence of a parallel to the third division.

We must, moreover, be equally surprised that, for a document so rich in the importance lent to petty matters of how a writ is folded and where the witnesses sign, so obsessed with the making of long lists and the organization of all knowledge into neat piles of symmetrically arranged words, the scribes who know how to make lists and match words nowhere come to the fore. They speak through the document. But they stand behind the curtains. They write the script, arrange the sets, design the costumes, situate the players in their place on the stage, raise the curtain — and play no role at all. We have no division or tractate on such matters as how a person becomes a scribe, how a scribe conducts his work, who forms the center of the scribal profession and how authority is gained therein, the rights and place of the scribe in the system of governance through courts, the organization and conduct of schools or circles of masters and disciples through which the scribal arts are taught and perpetuated. This absence of even minimal information on the way in which the scribal profession takes shape and does its work is stunning, when we realize that, within a brief generation, the Mishnah as a whole would fall into the hands of scribes, called rabbis,* both in the Land of Israel and in Babylonia. These rabbis would make of the Mishnah exactly what they wished. Construed from the perspective of the makers of the Mishnah, the priests and the scribes who provide contents and form, substance and style, therefore, the Mishnah turns out to omit all reference to actors, when laying out the world which is their play.

The metaphor of the theater for the economy of Israel, the household of holy Land and people, space and time, cult and home, leads to yet another perspective. When we look out upon the vast drama portrayed by the Mishnah, lacking as it does an account of the one who wrote the book, and the one about whom the book was written, we notice yet one more missing component. In the fundamental and generative structure of the Mishnah, we find no account of that other necessary constituent: the audience. To whom the document speaks is never specified. What group ("class") generates the Mishnah's problems is not at issue. True, it is taken for granted that the world of the Mishnah expresses the sanctified being of Israel in general. So the Mishnah speaks about the generality of Israel, the people. But to whom, within Israel, the Mishnah addresses itself, and what groups are expected to want to know what the Mishnah has to say are matters which never come to

*But the title, "rabbi," cannot be thought particular to those who served as judges and administrators in small-claims courts and as scribes and authorities in the Jewish community, called "rabbis" in the Talmudic literature and afterward. The title is clearly prior to its particularization in the institutions of the Talmudic community.

full expression.

Yet there can be no doubt of the answer to the question. The building block of Mishnaic discourse, the circumstance addressed whenever the issues of concrete society and material transactions are taken up, is the householder and his context. The Mishnah knows all sorts of economic activities. But for the Mishnah the center and focus of interest lie in the village. The village is made up of households, each a unit of production in farming. The households are constructed by, and around, the householder, father of an extended family, including his sons and their wives and children, his servants, his slaves, the craftsmen to whom he entrusts tasks he does not choose to do. The concerns of householders are in transactions in land. Their measurement of value is expressed in acreage of top, middle, and bottom grade. Through real estate critical transactions are worked out. The marriage settlement depends upon real property. Civil penalties are exacted through payment of real property. The principal transactions to be taken up are those of the householder who owns beasts which do damage or suffer it; who harvests his crops and must set aside and so by his own word and deed sanctify them for use by the castes scheduled from on high; who uses or sells his crops and feeds his family; and who, if he is fortunate, will acquire still more land. It is to householders that the Mishnah is addressed: the pivot of society and its bulwark, the units of production of which the village is composed, the corporate component of the society of Israel in the limits of the village and the land. The householder, as I said, is the building block of the house of Israel, of its *economy* in the classic sense of the word.

So, to revert to the metaphor which has served us well, the great proscenium constructed by the Mishnah now looms before us. Its arch is the canopy of heaven. Its stage is the holy Land of Israel, corresponding to heaven. Its actors are the holy people of Israel. Its events are the drama of unfolding time and common transactions, appointed times and holy events. Yet in this grand design we look in vain for the three principal participants: the audience, the actors, and the playwright. So we must ask why.

The reason is not difficult to discover, when we recall that, after all, what the Mishnah really wants is for nothing to happen. The Mishnah presents a tableau, a wax museum, a diorama. It portrays a world fully perfected and so wholly at rest. The one thing the Mishnah does not want to tell us is about change, how things come to be, or cease to be, what they are. That is why there can be no sustained attention to the caste of the priesthood and its rules, the scribal profession and its constitution, the class of householders and its interests. The Mishnah's pretense is that all of these have come to rest. They compose a world in stasis, perfect and complete, made holy

because it is complete and perfect. It is an economy — again in the classic sense of the word — awaiting the divine *act* of sanctification which, as at the creation of the world, would set the seal of holy rest upon an again-complete creation, just as in the beginning. There is no place for the actors when what is besought is no action whatsoever, but only perfection, which is unchanging. There is room only for a description of how things are: the present tense, the sequence of completed statements and static problems. All the action lies within, in how these statements are made. Once they come to full expression, with nothing left to say, there also is nothing left to do, no need for actors, whether scribes, priests, or householders.

We have now to ask how the several perspectives joined in the Mishnah do coalesce. What the single message is which brings them all together, and how that message forms a powerful, if transient, catalyst for the social groups which hold it — these define the task in portraying the Judaism for which the Mishnah is the whole evidence. Integral to that task, to be sure, is an account of why, for the moment, the catalyst could serve, as it clearly did, to join together diverse agents, to mingle, mix, indeed unite, for a fleeting moment, social elements quite unlike one another, indeed not even capable of serving as analogies for one another.

One of the paramount, recurring exercises of the Mishnaic thinkers is to give an account of how things which are different from one another become part of one another, that is, the problem of mixtures. This problem of mixtures will be in many dimensions, involving cases of doubt; cases of shared traits and distinctive ones; cases of confusion of essentially distinct elements and components; and numerous other concrete instances of successful and of unsuccessful, complete and partial catalysis. If I had to choose one prevailing motif of Mishnaic thought, it is this: the joining together of categories which are distinct, the distinguishing among those which are confused. The Mishnaic mode of thought is to bring together principles and to show both how they conflict and how the conflict is resolved; to deal with gray areas and to lay down principles for disposing of cases of doubt; to take up the analysis of entities into their component parts and the catalysis of distinct substances into a single entity; to analyze the whole, to synthesize the parts. The motive force behind the Mishnah's intellectual program of cases and examples, the thing the authorship of the Mishnah wants to do with all of the facts it has in its hand, is described within this inquiry into mixtures. Now the reasons for this deeply typical, intellectual concern with confusion and order, I think, are probably to be found here and there and everywhere.

For, after all, the basic mode of thought of the priests who made up the

priestly creation-legend (Gen. 1:1–2:4a) is that creation is effected through the orderly formation of each thing after its kind and correct location of each in its place. The persistent quest of the Mishnaic subsystems is for stasis, order, the appropriate situation of all things.

A recurrent theme in the philosophical tradition of Greco-Roman antiquity, current in the time of the Mishnah's formative intellectual processes, is the nature of mixtures,* the interpenetration of distinct substances and their qualities, the juxtaposition of incomparables. The types of mixture were themselves organized in a taxonomy: a mechanical composition, in which the components remain essentially unchanged, a total fusion, in which all particles are changed and lose their individual properties, and, in-between, a mixture proper, in which there is a blending. So, concern for keeping things straight and in their place is part of the priestly heritage, and it also is familiar to the philosophical context in which scribes can have had their being. Nor will the householders have proved disinterested in the notion of well-marked borders and stable and dependable frontiers between different things. What was to be fenced in and fenced out hardly requires specification.

And yet, however tradition and circumstances may have dictated this point of interest in mixtures and their properties, in sorting out what is confused and finding a proper place for every thing, I think there is still another reason for the recurrence of a single type of exercise and a uniform mode of thought. It is the social foundation for the intellectual exercise which is the Mishnah and its Judaism. In my view the very condition of Israel, standing, at the end of the second century, on the limns of its own history, at the frontiers among diverse peoples, on both sides of every boundary, whether political or cultural or intellectual — it is the condition of Israel itself which attracted attention to this matter of sorting things out. *The concern for the catalyst which joins what is originally distinct, the powerful attraction of problems of confusion and chaos, on the one side, and order and form, on the other — these form the generative problematic of the Mishnah as a system because they express in intellectual form the very nature and essential being of Israel in its social condition at that particular moment in Israel's history*. It is therefore the profound congruence of the intellectual program and the social and historical realities taken up and worked out by that intellectual program, which accounts for the power of the Mishnah to define the subsequent history of Judaism. That is why the inspirations of the few in time would become the convictions of the many. It is what Weber's questions generate for answers.

*I refer to S. Sambursky, *The Physics of the Stoics*.

II

THE MISHNAH'S METHODS OF THOUGHT

Now that the tributaries to the Mishnah have been specified, we have to turn to those traits of style and substance in which the Mishnah vastly exceeds the flood of its tributaries, becomes far more than the sum of its parts. The Mishnah in no way presents itself as a document of class, caste, or profession. It is something different.The difference comes to complete statement in the two dimensions which mark the measure of any work of intellect: style and substance, mode of thought, medium of expression, and message. These have now to be specified with full attention to recurrent patterns to be discerned among the myriad of detailed rules, problems, and exercises, of which the Mishnah is composed.*

Let us take up, first of all, the matter of style. The Mishnah's paramount literary trait is its emphasis on disputes about the law. Nearly all disputes, which dominate the rhetoric of the Mishnah, derive from bringing diverse legal principles into formal juxtaposition and substantive conflict. So we may say that the Mishnah as a whole is an exercise in the application to a given case, through practical reason, of several distinct and conflicting principles of law. In this context, it follows, the Mishnah is a protracted inquiry into the intersection of principles. It maps out the gray areas of the law delimited by such limns of confusion. An example of this type of "mixture" of legal principles comes in the conflict of two distinct bodies of the law. But gray areas are discerned not only through mechanical juxtaposition, making up a conundrum of distinct principles of law. On the contrary, the Mishnaic philosophers are at their best when they force into conflict laws which, to begin with, scarcely intersect. This they do, for example, by inventing cases in which the secondary implications of one law are brought into conflict with the secondary implications of some other. Finally, nothing will so instantly trigger the imagination of the Mishnah's exegetical minds as matters of ambiguity. A species of the genus of gray areas of the law is the excluded middle, that is, the creature or substance which appears to fall between two distinct and definitive categories. The Mishnah's framers time and again allude to such an entity, because it forms

*Documentation for the general statements made in this section will be found in my *Judaism: The Evidence of the Mishnah* (Chicago, 1981: The University of Chicago Press).

the excluded middle which inevitably will attract attention and demand categorization. There are types of recurrent middles among both human beings and animals as well as vegetables. Indeed, the obsession with the excluded middle leads the Mishnah to invent its own examples, which have then to be analyzed into their definitive components and situated in their appropriate category. What this does is to leave no area lacking in an appropriate location, none to yield irresoluble doubt.

The purpose of identifying the excluded middle is to allow the lawyers to sort out distinct rules, on the one side, and to demonstrate how they intersect without generating intolerable uncertainty, on the other. For example, to explore the theory that an object can serve as either a utensil or a tent, that is, a place capable of spreading the uncleanness of a corpse under its roof, the framers of the Mishnah invent a "hive." This is sufficiently large so that it can be imagined to be either a utensil or a tent. When it is whole, it is the former, and if it is broken, it is the latter. The location of the object, e.g., on the ground, off the ground, in a doorway, against a wall, and so on, will further shape the rules governing the cases (M. Ohalot 9:1–14). Again, to indicate the ambiguities lying at the frontiers, the topic of the status of Syria will come under repeated discussion. Syria is deemed not wholly sanctified, as is the Land of Israel, but also not wholly outside of the frame of Holy Land, as are all other countries. That is why to Syria apply some rules applicable to Holy Land, some rules applicable to secular land. In consequence, numerous points of ambiguity will be uncovered and explored (M. Sheb. 6:1–6).

Gray areas of the law in general, and the excluded middle in particular, cover the surface of the law. They fill up nearly every chapter of the Mishnah. But underneath the surface is an inquiry of profound and far-reaching range. It is into the metaphysical or philosophical issues of how things join together, and how they do not, of synthesis and analysis, of fusion and union, connection, division and disintegration. What we have in the recurrent study of the nature of mixtures, broadly construed, is a sustained philosophical treatise in the guise of an episodic exercise in *ad hoc* problem-solving. It is as if the cultic agendum, laid forth by the priests, the social agendum, defined by the confusing status and condition of Israel, and the program for right categorization of persons and things, set forth for the scribes to carry out — all were taken over and subsumed by the philosophers who proposed to talk abstractly about what they deemed urgent, while using the concrete language and syntax of untrained minds. To put it differently, the framers of the Mishnah, in their reflection on the nature of mixtures in their various potentialities for formation and dissolution, shape into hidden

discourse, on an encompassing philosophical-physical problem of their own choosing, topics provided by others.

In so doing, they phrased the critical question demanding attention and response, the question in dimensions at once social, political, metaphysical, cultural, and even linguistic, but above all, historical: the question of Israel, standing at the outer boundaries of a long history now decisively done with. That same question of acculturation and assimilation, alienation and exile, which had confronted the sixth century B.C. priests of the Priestly Code, from 70 to 200 was raised once more. Now it is framed in terms of mechanical composition, fusion, and something in-between, mixtures. But it is phrased in incredible terms of a wildly irrelevant world of unseen things, of how we define the place of the stem in the entity of the apple, the affect of the gravy upon the meat, and the definitive power of a bit of linen in a fabric of wool. In concrete form, the issues are close to comic. In abstract form, the answers speak of nothing of workaday meaning. In reality, at issue is Israel in its Land, once the lines of structure which had emanated from the Temple had been blurred and obliterated. It is in this emphasis upon sorting out confused things that the Mishnah becomes truly Mishnaic, distinct from modes of thought and perspective to be assigned to groups represented in the document. To interpret the meaning of this emphasis, we must again recall that the Priestly Code makes the point that a well-ordered society on earth, with its center and point of reference at the Temple altar, corresponds to a well-ordered canopy of heaven. Creation comes to its climax at the perfect rest marked by completion and signifying perfection and sanctification. Indeed, the creation-myth represents as the occasion for sanctification a perfected world at rest, with all things in their rightful place. Now the Mishnah takes up this conviction, which is located at the deepest structures of the metaphysic of the framers of the Priestly Code and, therefore, of their earliest continuators and imitators in the Mishnaic code. But the Mishnah does not frame the conviction that in order is salvation through a myth of creation and a description of a cult of precise and perfect order, such as is at Gen. 1:1–2:4a. True, the Mishnah imposes order upon the world through lines of structure emanating from the cult. The verses of Scripture selected as authoritative leave no alternative.

Yet, the Mishnah at its deepest layers, taking up the raw materials of concern of priests and farmers and scribes, phrases that concern after the manner of philosophers. That is to say, the framers of the Mishnah speak of the physics of mixtures, conflicts of principles which must be sorted out, areas of doubt generated by confusion. The detritus of a world seeking order but suffering chaos now is reduced to the construction of intellect. If,

therefore, we wish to characterize the Mishnah when it is cogent and distinctive, we must point to this persistent and pervasive mode of thought. For the Mishnah takes up a vast corpus of facts and treats these facts, so to speak, "Mishnaically," that is, in a way distinctive to the Mishnah, predictable and typical of the Mishnah. That is what I mean when I refer to the style of the Mishnah: its manner of exegesis of a topic, its mode of thought about any subject, the sorts of perplexities which will precipitate the Mishnah's fertilizing flood of problem-making ingenuity. Confusion and conflict will trigger the Mishnah's power to control conflict by showing its limits, and, thus, the range of shared conviction too.

For by treating facts "Mishnaically," the Mishnah establishes boundaries around, and pathways through, confusion. It lays out roads to guide people by ranges of permissible doubt. Consequently, the Mishnah's mode of control over the chaos of conflicting principles, the confusion of doubt, the improbabilities of a world out of alignment, is to delimit and demarcate. By exploring the range of interstitial conflict through its ubiquitous disputes, the Mishnah keeps conflict under control. It so preserves that larger range of agreement, that pervasive and shared conviction, which is never expressed, which is always instantiated, and which, above all, is forever taken for granted. The Mishnah's deepest convictions about what lies beyond confusion and conflict are never spelled out; they lie in the preliminary, unstated exercise prior to the commencement of a sustained exercise of inquiry, a tractate. They are the things we know before we take up that exercise and study that tractate.

Now all of this vast complex of methods and styles, some of them intellectual, some of them literary and formal, may be captured in the Mishnah's treatment of its own, self-generated conflicts of principles, its search for gray areas of the law. It also may be clearly discerned in the Mishnah's sustained interest in those excluded middles it makes up for the purpose of showing the limits of the law, the confluence and conflict of laws. It further may be perceived in the Mishnah's recurrent exercise in the study of types of mixtures, the ways distinct components of an entity may be joined together, may be deemed separate from one another, may be shown to be fused, or may be shown to share some traits and not others. Finally, the Mishnah's power to sort out matters of confusion will be clearly visible in its repeated statement of the principles by which cases of doubt are to be resolved. A survey of these four modes of thought thus shows us one side of the distinctive and typical character of the Mishnah, when the Mishnah transcends the program of facts, forms, and favored perspectives of its tributaries. We now turn to the side of substance. What causes and resolves

confusion and chaos is the power of the Israelite's will. As is said in the context of measurements for minimum quantities to be subject to uncleanness, "All accords with the measure of the man" (M. Kel. 17:11).

The Mishnah's principal message is that Israelite man is at the center of creation, the head of all creatures upon earth, corresponding to God in heaven, in whose image man is made. The way in which the Mishnah makes this simple and fundamental statement is to impute power to the Israelite to inaugurate and initiate those corresponding processes, sanctification and uncleanness, which play so critical a role in the Mishnah's account of reality. The will of man, expressed through the deed of man, is the active power in the world. Will and deed — these constitute those actors of creation which work upon neutral realms, subject to either sanctification or uncleanness: the Temple and table, the field and family, the altar and hearth, woman, time, space, transactions in the material world and in the world above as well. An object, a substance, a transaction, even a phrase or a sentence, is inert but may be made holy, when the interplay of the will and deed of man arouses and generates its potential to be sanctified. Each may be treated as ordinary or (where relevant) made unclean by neglect of the will and inattentive act of man. Just as the entire system of uncleanness and holiness awaits the intervention of man, which imparts the capacity to become unclean upon what was formerly inert, or which removes the capacity to impart cleanness from what was formerly in its natural and puissant condition, so in the other ranges of reality, man is at the center on earth, just as is God in heaven. Man is counterpart and partner in creation, in that, like God he has power over the status and condition of creation, putting everything in its proper place, calling everything by its rightful name.

So, stated briefly, the question taken up by the Mishnah is, What can a man do? And the answer laid down by the Mishnah is, Man, through will and deed, is master of this world, the measure of all things. Since when the Mishnah thinks of man, it means the Israelite, who is the subject and actor of its system, the statement is clear. This man is Israel, who can do what he wills. In the aftermath of the two wars, the message of the Mishnah cannot have proved more pertinent — or poignant and tragic. The principal message of the Mishnah is that the will of man affects the material reality of the world and governs the working of those forces, visible or not, which express and effect the sanctification of creation and of Israel alike. This message comes to the surface in countless ways. At the outset a simple example of the supernatural power of man's intention suffices to show the basic power of the Israelite's will to change concrete, tangible facts. The power of the human will is no where more effective than in the cult, where, under certain

circumstances, what a person is thinking is more important than what he does. The basic point is that if an animal is designated for a given purpose, but the priest prepares the animal with the thought in mind that the beast serves some other sacrificial purpose, then, in some instances, in particular involving a sin offering and a Passover on the fourteenth of Nisan, the sacrifice is ruined. In this matter of preparation of the animal, moreover, are involved the deeds of slaughtering the beast, collecting, conveying, and tossing the blood on the altar, that is, the principal priestly deeds of sacrifice. Again, if the priest has in mind, when doing these deeds, to offer up the parts to be offered up on the altar, or to eat the parts to be eaten by the priest, in some location other than the proper one (the altar, the courtyard, respectively), or at some time other than the requisite one (the next few hours), the rite is spoiled, the meat must be thrown out. Now that is the case, even if the priest did not do what he was thinking of doing. Here again we have a testimony to the fundamental importance imputed to what a person is thinking, even over what he actually does, in critical aspects of the holy life (M. Zebahim 1:1–4:6, Menahot 1:1–4:5).

Once man wants something, a system of the law begins to function. Intention has the power, in particular, to initiate the processes of sanctification. So the moment at which something becomes sacred and so falls under a range of severe penalties for misappropriation or requires a range of strict modes of attentiveness and protection for the preservation of cleanness is defined by the human will. Stated simply: at the center of the Mishnaic system is the notion that man has the power to inaugurate the work of sanctification, and the Mishnaic system states and restates that power. This assessment of the positive power of the human will begins with the matter of uncleanness, one antonym of sancification or holiness. Man alone has the power to inaugurate the system of uncleanness.

From the power of man to introduce an object or substance into the processes of uncleanness, we turn to the corresponding power of man to sanctify an object or a substance. This is a much more subtle matter, but it also is more striking. It is the act of designation by a human being which "activates" that holiness inherent in crops from which no tithes have yet been set aside and removed. Once the human being has designated what is holy within the larger crop, then that designated portion of the crop gathers within itself the formerly-diffused holiness and becomes holy, set aside for the use and benefit of the priest to whom it is given. So it is the interplay between the will of the farmer, who owns the crop, and the sanctity inherent in the whole batch of the crop itself, which is required for the processes of sanctification to work themselves out.

In addition to the power to initiate the process of sanctification and the system of uncleanness and cleanness, man has the power, through the working of his will, to differentiate one thing from another. The fundamental category into which an entity, which may be this or that, is to be placed is decided by the human will for that entity. Man exercises the power of categorization, so ends confusion. Once more, the consequence will be that, what man decides, Heaven confirms or ratifies. Once man determines that something falls into one category and not another, the interest of Heaven is provoked. Then misuse of that thing invokes Heavenly penalties. So man's will has the capacity so to work as to engage the ratifying power of Heaven. Let us take up first of all the most striking example, the deed itself. It would be difficult to doubt that what one does determines the effect of what one does. But that position is rejected. The very valence and result of a deed depend, to begin with, on one's prior intent. The intent which leads a person to do a deed governs the culpability of the deed. There is no intrinsic weight to the deed itself. Human will not only is definitive. It also provides the criterion for differentiation in cases of uncertainty or doubt. This is an overriding fact. That is why I insisted earlier that the principal range of questions addressed by the Mishnah — areas of doubt and uncertainty about status or taxonomy — provokes an encompassing response. This response, it now is clear, in the deep conviction of the Mishnaic law, present at the deepest structures of the law, is that what man wills or thinks decides all issues of taxonomy.

To conclude: The characteristic mode of thought of the Mishnah thus is to try to sort things out, exploring the limits of conflict and the range of consensus. The one thing which the Mishnah's framers predictably want to know concerns what falls between two established categories or rules, the gray area of the law, the excluded middle among entities, whether persons, places, or things. This obsession with the liminal or marginal comes to its climax and fulfillment in the remarkably wide-ranging inquiry into the nature of mixtures, whether these are mixtures of substance in a concrete framework or of principles and rules in an abstract one. So the question is fully phrased by both the style of the Mishnaic discourse and its rhetoric. It then is fully answered. The question of how we know what something is, the way in which we assign to its proper frame and category what crosses the lines between categories, is settled by what Israelite man wants, thinks, hopes, believes, and how he so acts as to indicate his attitude. With the question properly phrased in the style and mode of Mishnaic thought and discourse, the answer is not difficult to express. What makes the difference, what sets things into their proper category and resolves those gray areas of

confusion and conflict formed when simple principles intersect and produce dispute, is man's will. Israel's despair or hope is the definitive and differentiating criterion.

III

THE CONVICTIONS OF THE MANY

Passionate concern for order and stability, for sorting things out and resolving confusion, ambiguity, and doubt — these may well characterize the mind of priests, scribes, and householders. The priests, after all, emerge from a tradition of sanctification achieved through the perfection of the order of creation — that is the theology of their creation-myth. The scribes with their concern for the correspondence between what they do on earth and what is accorded approval and confirmation in Heaven, likewise carry forward that interest in form and order characteristic of a profession of their kind. But if I had to choose that single group for whom the system speaks, it would be neither of these. We noted at the outset that the scribe and the priest are noteworthy by their absence from the fundamental structure and organization of the Mishnah's documents. By contrast, the householder forms the focus of two of the six divisions, those devoted to civil law and family. Let us then reflect for a moment on the ways in which the householder will have found the Mishnah's principal modes of concern congruent with his own program. We speak now of the householder in a courtyard, for he is the subject of most predicates. He is the proprietor of an estate, however modest, however little. He also is a landholder in the fields, an employer with a legitimate claim against lazy or unreliable workers, the head of a family, and the manager of a small but self-contained farm. He is someone who gives over his property to craftsmen for their skilled labor, but is not a craftsman himself. He also is someone with a keen interest in assessing and collecting damages done to his herds and flocks, or in paying what he must for what his beasts do. The Mishnah speaks for someone who deems thievery to be the paltry, petty thievery ("Oh! the servants!") of watchmen of an orchard and herdsmen of a flock, and for a landowner constantly involved in transactions in real property.

The Mishnah's class-perspective, described merely from its topics and problems, is that of the undercapitalized and overextended upper-class

farmer, who has no appreciation whatsoever for the interests of those with liquid capital and no understanding of the role of trading in commodity-futures. This landed proprietor of an estate of some size sees a bushel of grain as a measure of value. But he does not concede that, in the provision of supplies and sustenance through the year, from one harvest to the next, lies a kind of increase no less productive than the increase of the fields and the herd. The Mishnah is the voice of the head of the household, the pillar of society, the model of the community, the arbiter and mediator of the goods of this world, fair, just, honorable, above all, reliable.

The Mishnah therefore is the voice of the Israelite landholding, proprietary class (compare *Soviet Views of Talmudic Judaism. Five Papers by Yu. A. Solodukho in English Translation*, edited with a commentary by this writer (Leiden, 1973: E. J. Brill)). Its problems are the problems of the landowner, the householder, as I said, the Mishnah's basic and recurrent subject for nearly all predicates. Its perspectives are his. Its sense of what is just and fair expresses his sense of the givenness and cosmic rightness of the present condition of society. Earth matches Heaven. The Mishnah's hope for Heaven and its claim on earth, to earth, corresponding to the supernatural basis for the natural world, bespeak the imagination of the surviving Israelite burgherdom of the mid-second century Land of Israel — people deeply tired of war and its dislocation, profoundly distrustful of messiahs and their dangerous promises. These are men of substance and means, however modest, aching for a stable and predictable world in which to tend their crops and herds, feed their families and workers, keep to the natural rhythms of the seasons and the lunar cycles, and, in all, live out their lives within strong and secure boundaries, on earth and in Heaven.

Now when we turn away from the Mishnah's imagined world to the actual context of the Israelite community after the destruction of the Temple in 70 and still later after Bar Kokhba, we are able to discern what it is that the Mishnah's sages have for raw materials, the slime they have for mortar, the bricks they have for building. The archaeological evidence of the later second and third century reveals a thriving Israelite community in Galilee and surrounding regions, a community well able to construct for itself synagogues of considerable aesthetic ambition, to sustain and support an internal government and the appurtenances of an abundant life. What that means is that, while the south was permanently lost, the north remained essentially intact. Indeed, it would be on the sturdy and secure foundations of that stable community of the northern part of the Land of Israel that Israelite life for the next three or four hundred years — a very long time — would be constructed.

So when the Mishnah's sages cast their eyes out on the surviving Israelite world, their gaze must have rested upon that thing which had endured, and would continue to endure, beyond the unimaginable catastrophe brought on by Bar Kokhba and his disruptive messianic adventure. Extant and enduring was a world of responsible, solid farmers and their slaves and dependents, the men and women upon the backs of whom the Israelite world would now have come to rest. They, their children, slaves, dependents could yet make a world to endure — if only they could keep what they had, pretty much as they had it — no more, but also no less. Theirs was not a society aimed at aggrandizement. They wanted no more than to preserve what had survived out of the disorderly past. That is why the Mishnah's is not a system respectful of increase. It asks no more than that what is to be is to be. The Mishnah seeks the perfection of a world at rest, the precondition of that seal of creation's perfection sanctified on the seventh day of creation and perpetually sanctified by the seventh day of creation.

But if the philosophers of Israelite society refer to a real world, a world in being, the values of which were susceptible of protection and preservation, the boundaries of which were readily discerned, they also defied that real world. They speak of location but have none. For Israelite settlement in the Land then was certainly not contiguous. There was no polity resting on a homogeneous social basis. All Israel had was villages, on a speckled map of villages of many peoples. There was no Israelite nation, in full charge of its lands or Land, standing upon contiguous and essentially united territories. This locative polity is built upon utopia: no one place. The ultimate act of will is forming a locative system in no particular place, speaking no where about somewhere, concretely specifying utopia. This is done — in context — because Israel wills it.

At the end, Weber's problem points the way for further inquiry: how do the inspirations of a few become the convictions of the many? For, we observe, while the Mishnah came into the world as the law-book of a class of scribes and small-claims-court-judges, it in time to come formed the faith and piety of the many of Israel, the Jews at large, the workers and craftsmen. And these, it must be emphasized, were not landholders and farmers. They were in the main landless craftsmen and workers, but they took over this book of landholders and farmers and accepted it as the other half, the Oral half, of the whole Torah of God to Moses at Mount Sinai.

That is to say, in somewhat less mythological terms, the Mishnah began with some one group, in fact, with a caste, a class, and a profession. But it very rapidly came to form the heart and center of the imaginative life and concrete politics, law, and society of a remarkably diverse set of groups, that

is, the Jewish people as a whole. So the really interesting question, when we move from the account of Israelite religion and society in the first and second centuries, represented by the Mishnah, to religion and society in the third and fourth centuries, represented by the Talmuds, and in the fifth and later centuries, represented by the Midrashim, is how the Mishnah was transformed in social context from one thing into something else. If, as I said at the outset, we locate "the status group whose material and ideal way of life a given idea or value tends to enhance," then we must ask why that same idea or value served, as it did, to enhance a far wider and more encompassing group within Israelite society. We must investigate how it came about that, in time to come, Judaism, the world view and way of life resting upon the Scriptures and upon the Mishnah and in due course upon the Talmuds, came to constitute the world view and way of life of nearly all Israel.

For the difficult question before us is the truly historical one: the question of change, of why things begin in one place but move onward, and of how we may account for what happens. The weak point of sociology of religion, in Weber's powerful formulation, emerges from its strong point. If we begin by asking about the relevance of religious ideas to collective actions, we must proceed to wonder about the continuing relevance of religious ideas within a changing collectivity and context. If as Bendix says, Weber emphasizes the issue of how a given idea or value enhances the way of life of a "status-group," then we must wonder why that given idea or value succeeds in maintaining its own free-standing, on-going life among and for entirely other status-groups and types of social groups. The history of Judaism from the formation of the Mishnah onward through the next four centuries, amply documented as is that period, provides one important arena for inquiry into yet another constituent of Weber's grand program. But this next set of questions will have to be taken up in another lecture. For the honor of the invitation to give this one, I thank my host, and for the gracious hospitality and hearing accorded to me on this visit, I thank you all.

THEOLOGY LIBRARY
CLAREMONT, CALIF.